

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Hon. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment of the Commission's Rules to Permit  
Flexible Service Offerings in the Commerical  
Mobile Radio Service - WT Docket No. 96-6

Dear Secretary Caton:

Enclosed please find an original and nine copies of the  
Response to the Notice of Proposed Rulemaking of the New York  
State Department of Public Service in the above-captioned  
proceeding.

Respectfully submitted,

*Susan M. Narkewicz*

Susan M. Narkewicz  
Assistant Counsel

Enclosure  
cc: All Parties

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of the Commission's )  
Rules to Permit Flexible Service )  
Offerings in the Commercial )  
Mobile Radio Services )

WT Docket No. 96-6

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COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Notice of Proposed Rulemaking ("Notice") whereby the Commission seeks comments concerning its proposal that Commercial Mobile Radio Service ("CMRS") providers be authorized to offer fixed wireless local loop service. In effect, the Commission proposes to treat fixed wireless local loop services as ancillary to CMRS services offered by CMRS providers, and thus, subject to a regulatory regime different from landline local exchange carriers ("LECs").

The NYDPS concurs with the Commission goal of removing barriers to competition in the provision of local exchange service. However, under the Commission's previous decision defining mobile services, a fixed wireless local loop clearly is not a mobile service. In the Second Report and Order, the Commission distinguished between fixed point-to-point services

and those services capable of transmitting while mobile.<sup>1</sup> Yet in the instant Notice, the Commission appears to propose that if a wireless loop (which is not mobile) is coupled with landline facilities, the service should be categorized as mobile, and therefore, subject to CMRS regulations. Coupling a wireless local loop with a landline to provide local exchange service does not transform the combined service into a mobile service.

Rather, this situation is analogous to Basic Exchange Telecommunications Radio Service ("BETRS") where the Commission specifically excluded from the mobile definition those services which are solely fixed in nature. In particular, the Commission agreed that "the substitution of a radio loop for a wire loop in the provision of BETRS does not constitute mobile service... (under section 3(n) of the Communications Act. Rather,) this service was intended to be an extension of intrastate basic exchange telephone service. Thus, the radio loop merely takes the place of wire or cable."<sup>2</sup> Consequently, landline LECs that use fixed wireless loops in the provision of local exchange

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<sup>1</sup> Implementation of Sections 3(n) and 332 Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, para. 38 (released March 7, 1994) ("Second Report and Order"). A mobile service station capable of transmitting while the platform is moving was included in the definition of mobile services. In contrast, the definition excluded platforms that could not be moved when such communications services were offered. For example, satellite services provided to or from a transportable platform that could not be used in a mobile mode were excluded from the definition of mobile services.

<sup>2</sup> Second Report and Order, para. 38, citing Basic Exchange Telecommunications Radio Service, Report and Order, 3 FCC Rcd 214, 217 (1988) ("BETRS Order").

services are merely offering local exchange alternatives, and not mobile services, and thus, remain under the authority of the Communications Act section 152(b).

While the NYDPS believes that regulation should not drive the deployment of technology, the NYDPS has concerns that to the extent that the Commission definition of mobile services could be interpreted to allow LECs to use wireless loops in their provision of local exchange service, they should be regulated as local exchange carriers and not as CMRS providers. The Commission should not interpret mobile services to allow LECs to combine wireless loops with their landline facilities in their provision of local exchange service in order to be categorized as CMRS providers. At a minimum, the Commission should not permit this interpretation to apply to dominant LECs.

In conclusion, landline LECs that use wireless loops in the provision of local exchange services are merely offering local exchange alternatives and not mobile services.

Respectfully submitted,



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Dated: February 29, 1996

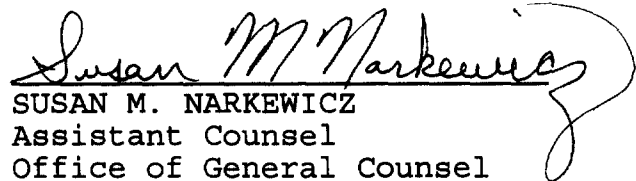
WT Docket 96-6

In the Matter of Amendment of  
the Commission's Rules to  
Permit Flexible Service Offerings in the  
Commercial Mobile Radio Services

Comments of New York State  
Department of Public Service

CERTIFICATE OF SERVICE

I hereby certify that an original plus nine copies of the above-captioned proceeding were sent via Federal Express to Mr. Caton, and by first class United States mail, postage prepaid, to all parties on the attached service list.

  
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